



What is Exceptional Student Education?

Exceptional Student Education is specially designed instruction and related services that are provided to students with disabilities and students who are identified as gifted.¹ Student enrollment in ESE programs is one factor considered in determining the funding a school district receives.²

With regard to students with disabilities, the federal Individuals with Disabilities Education Act (IDEA) requires school districts to make a free appropriate public education (FAPE) available to such students ages three through 21.³ A school district, at its discretion, may provide services to eligible infants and toddlers with disabilities below three years of age.⁴ A FAPE must include special education and related services⁵ that are provided by the public school system at no cost to the parent, which meet the standards of the state and which are in conformity with the student's individual educational plan (IEP).⁶

The IDEA does not address gifted students; however, state law and State Board of Education rule require school districts to provide a FAPE to gifted students as well.⁷ State law specifies that districts must provide special instruction and services to gifted students, but does not mandate or describe the specific types of instruction and services required.⁸

¹ Section 1003.57(1), F.S.; rule 6A-6.03411(1)(m) and (n), F.A.C. Whether the gifted program should continue to be part of the exceptional student education (ESE) program or whether it should be a separate stand-alone program has been a topic of recent discussion. The Office of Program Policy Analysis and Government Accountability (OPPAGA) identified the advantages and disadvantages of classifying gifted students as exceptional students by reviewing available research and holding focus group discussions with parents, gifted students, teachers, and district administrators. See Office of Program Policy Analysis and Government Accountability, *Florida Gifted Grew Faster Than the Overall School Enrollment*, Report No. 08-01, at 11 (Jan. 2008), available at <http://www.oppaga.state.fl.us/MonitorDocs/Reports/pdf/0801rpt.pdf> [hereinafter *OPPAGA Report No. 08-01*].

² See s. 1011.62(1)(c), F.S.

³ 20 U.S.C. s. 1400(d)(1)(A); 34 C.F.R. s. 300.101; rules 6A-6.03028(1) and 6A-6.03411(1)(p), F.A.C.; see also Individuals with Disabilities Education Act (IDEA) Fact Sheet.

⁴ Rules 6A-6.0331 and 6A-6.03026, F.A.C.

⁵ "Related services" means "transportation and such developmental, corrective, and other supportive services as are required to assist a child with a disability to benefit from special education, and includes speech-language pathology and audiology services, interpreting services, psychological services, physical and occupational therapy, recreation, including therapeutic recreation, early identification and assessment of disabilities in children, counseling services, including rehabilitation counseling, orientation and mobility services, and medical services for diagnostic or evaluation purposes." "Related services" also include school health services and school nurse services, social work services in schools, and parent counseling and training. 34 C.F.R. s. 300.34 (a).

⁶ 34 C.F.R. s. 300.17; rules 6A-6.03028(1) and 6A-6.03411(1)(p), F.A.C.

⁷ See ss. 1003.01(3)(a) and 1011.62(1)(e)c.2., F.S.; rules 6A-6.0331(1) and 6A-6.03411(1)(m), F.A.C.

⁸ Section 1003.57(1), F.S.

What disabilities qualify a student as an exceptional student?

Disabilities that qualify a student as an exceptional student are: an intellectual disability; an autism spectrum disorder; a speech impairment; a language impairment; an orthopedic or other health impairment; a traumatic brain injury; a visual impairment; an emotional or behavioral disability; a specific learning disability, including dyslexia, dyscalculia, or developmental aphasia; deafness, hard of hearing, or dual sensory impaired; or developmental delays from birth through five years old or if the student is hospitalized or homebound.⁹

Children ages birth to two years who are diagnosed with physical or mental conditions known to have a high probability of resulting in developmental delay or disability may also be classified as exceptional students. Such conditions are referred to as “established conditions” and include genetic disorders, metabolic disorders, neurological abnormalities and insults, or severe attachment disorder.¹⁰

How are students determined eligible for Exceptional Student Education services?

Students may be referred for an evaluation for ESE services by their parents or by school staff.¹¹ With few exceptions,¹² prior to referring a student for evaluation as a student with a disability, school districts must use a problem solving/response to instruction or intervention (PS/RtI) method to develop and implement evidenced based general education interventions to address the student’s area(s) of academic or behavioral concern.¹³ If the school-based team determines that general education interventions are not sufficiently effective, a referral for evaluation is made. A student may not be evaluated for ESE eligibility without the prior informed consent of the parent. A team of professionals and the student’s parent (i.e., eligibility staffing committee) review the evaluation results to determine if the student meets the requirements for eligibility under one or more state board rules and if there is evidence of a need for special education and related services.¹⁴

In order for a student to be eligible for a gifted ESE program, a student must either:

- ❖ Demonstrate a need for a special program, superior intellectual development as measured by an intelligence quotient (IQ) of at least two standard deviations above the mean,¹⁵ and possess gifted characteristics according to a standard scale or checklist;¹⁶ or

⁹ Sections 1003.01(3)(a) and 1003.21(1)(e), F.S.

¹⁰ Section 1003.01(3)(a), F.S.; rule 6A-6.03030(1), F.A.C.

¹¹ Rule 6A-6.0331(3), F.A.C.

¹² For children below mandatory school attendance age and who are not yet enrolled in kindergarten, the general education intervention requirements are not applicable. However, these children are required to have existing social, psychological, and medical data reviewed with a health screening, if necessary; and vision and hearing screenings are required to rule out sensory deficits. Additional screenings may be conducted, if warranted. Rule 6A-6.0331(2), F.A.C.

¹³ Rule 6A-6.0331(1) and (3)(a), F.A.C.

¹⁴ Rule 6A-6.0331(3)(a), (4), (5) and (b), F.A.C.

¹⁵ Two standard deviations above the mean or higher generally equates to a determination that a student has an intelligence quotient (IQ) of 130 or higher. *OPPAGA Report No. 08-01, supra* note 1 at 4.

¹⁶ Rule 6A-6.03019(2)(a), F.A.C.

- ❖ Be a member of an underrepresented group, i.e. limited English proficient or of low socio-economic status and meet the criteria in an approved school district plan for increasing participation in gifted education by underrepresented groups.¹⁷

These students must then meet the criteria set forth in the school district's plan.¹⁸

If a student is found eligible for an ESE program, a plan is developed for the student. This plan is referred to as an:

- ❖ Individual educational plan (IEP) for students with disabilities ages three through 21.¹⁹
- ❖ Individualized family support plan (IFSP) for children ages birth through two (and may also be used for children ages three through five years in lieu of an IEP).²⁰
- ❖ Educational plan (EP) for gifted students.²¹

Within 30 days of determining a student's eligibility to receive exceptional student education or related services by a school district, or other state agency, an EP or IEP team must meet to develop a plan to address the student's needs.²² The multidisciplinary team includes school and district staff, and other experts, if necessary.²³ Parents also participate in the development of the plans, which may not be implemented until the parent provides consent for initial placement in the ESE program.²⁴

During the 2009-10 academic year, 507,838 Florida public school students were served in programs for exceptional students. Of that number, 137,127 were gifted students and 370,711 were students with disabilities.²⁵

What does the IEP, IFSP, or EP include and how frequently must these documents be updated?

Each of these plans includes a description of the student's current academic and/or functional levels of performance, a statement of goals and objectives or benchmarks (for students who take the alternate assessment or any student at the discretion of the IEP team) for the student, and a statement of the specially designed instruction and related services, including supplemental aides and services, to be provided. The plans are designed to meet the individual needs of the student.²⁶

¹⁷ Rule 6A-6.03019(2)(b), F.A.C.

¹⁸ Rule 6A-6.03019(2), F.A.C.

¹⁹ Rule 6A-6.03028, F.A.C.

²⁰ Rule 6A-6.03029, F.A.C. For children ages birth through two years, individual family support plans (IFSPs) must be developed within 45 days from referral. Rule 6A-6.03029(4)(a), F.A.C. For children ages three through five years, IFSPs must be developed within 30 days of determining a child is eligible for ESE or related services. Rule 6A-6.03029(5), F.A.C.

²¹ Rule 6A-6.030191, F.A.C.

²² Rules 6A-6.03028(3)(f) and 6A-6.030191(6)(b), F.A.C.

²³ Rules 6A-6.03028(3)(c), 6A-6.030191(3), and 6A-6.03029(6), F.A.C.

²⁴ Rule 6A-6.0331(9), F.A.C.

²⁵ Florida Department of Education, Education Information and Accountability Services Data Report, *Membership Programs for Exceptional Students*, at 2 (Feb. 2010), available at <http://www.fldoe.org/eias/eiaspubs/word/esemem0910.doc>.

²⁶ Rules 6A-6.03028(3)(h), 6A-6.03029(3), and 6A-6.030191(4), F.A.C.

An IEP or IFSP team must meet at least annually to review and revise the plan for a student with a disability ages three through 21.²⁷ IEPs may be reviewed more frequently as needed, such as when the student transitions from elementary school to middle school and middle school to high school or if the student's parent or teacher requests a review.²⁸ Students with disabilities must be reevaluated at least once every three years to determine their continuing eligibility for special education and related services.²⁹ In addition, a student's parent or teacher may request an IEP team meeting or a reevaluation at any time.³⁰ There is no requirement that gifted students be reevaluated.³¹

How are instructional services provided to exceptional students?

Special programs for exceptional students (students with disabilities and students who are gifted) include instruction and related services to adapt curriculum, methodology, materials, equipment, or environment to meet individual learning needs.³² Exceptional students are required to receive instruction in one or more of the following settings:

- ❖ Regular class.
- ❖ Special class.
- ❖ Special day school.
- ❖ Residential school.
- ❖ Special class in a hospital or facility operated by a noneducational agency.
- ❖ Individual instruction in a hospital or home.
- ❖ Supplementary instructional personnel to public or nonpublic preschool or day care programs for the instruction of pre-kindergarten exceptional students.³³

Additionally, states are required to monitor school districts in order to measure their performance in providing a FAPE in the least restrictive environment (LRE).³⁴ To be in compliance with the

LRE requirement, states must educate students with disabilities with their nondisabled peers to the maximum extent appropriate. Special classes, special schooling, or other removal of the student from the regular education environment should only occur if the nature and severity of his or her disability is such that an appropriate education in regular classes cannot be achieved satisfactorily.³⁵ The LRE must be considered during the development of the student's IEP.³⁶

²⁷ Rule 6A-6.03028(3)(f)3. and (j), F.A.C.

²⁸ Rule 6A-6.030191(6)(c), F.A.C.

²⁹ Rule 6A-6.0331(7), F.A.C.

³⁰ Rule 6A-6.03028, F.A.C.

³¹ See rule 6A-6.0331, F.A.C.

³² Rule 6A-6.0311, F.A.C.

³³ 34 C.F.R. s. 300.115.

³⁴ 34 C.F.R. s. 300.600 (d)(1).

³⁵ 34 C.F.R. s. 300.114(a)(2); s. 1003.57(1)(d); rule 6A-6.03028(3)(i), F.A.C.

³⁶ *L.G. et al. v. School Bd. Of Palm Beach County, Fla.*, 512 F. Supp.2d 1240, 1247-1249 (S.D. Fla. 2007).

What special education services are available to a student with a disability?

Special education services for students with disabilities include specially designed instruction³⁷ and related services that are necessary to enable the student to benefit from education. Such services may include: transportation; diagnostic and evaluation services; social services; physical and occupational therapy; speech and language pathology; job placement; orientation and mobility training; braillists; typists; readers for the blind; interpreters and auditory amplification; rehabilitation counseling; transition services; mental health services; guidance and career counseling; specified materials; assistive technology devices; and other specialized equipment.³⁸

What is the specialized instructional services program for children with disabilities under the Voluntary Prekindergarten Education Program?

In 2010,³⁹ the Legislature established a specialized instructional services program for children with disabilities as an option under the Voluntary Prekindergarten Education (VPK) Program.⁴⁰ Beginning with the 2012-13 academic year, a child who has a disability is eligible for specialized instructional services if the child is eligible for the VPK Program and has a current IEP developed by the district school board.⁴¹

The parent of a child who is eligible for the VPK Program option for children with disabilities may select one or more specialized services that are consistent with the child's IEP. Those services may include, but not be limited to, applied behavior analysis, speech-language pathology, occupational therapy, and physical therapy.⁴² Specialized instructional services must be delivered according to accepted professional standards and VPK Program performance standards adopted by the Department of Education (DOE).⁴³

The DOE is directed to approve specialized instructional service providers, maintain a list of approved providers, and notify each school district and early learning coalition of the approved provider list.⁴⁴ Upon the request of a child's parent, DOE may approve a specialized instructional service provider that is not on the approved list if the provider's services meet accepted professional standards and VPK Program performance standards and the service is consistent with the child's IEP.⁴⁵

³⁷ School boards must modify basic courses, as necessary, to assure students with disabilities the opportunity to meet the graduation requirements for a standard diploma. Modifications to basic courses do not include modifications to the curriculum frameworks or student performance standards. See rule 6A-6.0312, F.A.C.

³⁸ Section 1003.01(3)(b), F.S.; rule 6A-6.03411(1)(dd), F.A.C.; see also Individuals with Disabilities Education Act (IDEA) Fact Sheet.

³⁹ Section 4, ch. 2010-227, L.O.F., codified at s. 1002.66, F.S.

⁴⁰ Section 1002.53, F.S.

⁴¹ Section 4, ch. 2010-227, L.O.F., codified at s. 1002.66(1), F.S.

⁴² Section 4, ch. 2010-227, L.O.F., codified at s. 1002.66(2), F.S.

⁴³ Section 4, ch. 2010-227, L.O.F., codified at s. 1002.66(3), F.S.

⁴⁴ Section 6, ch. 2010-227, L.O.F., amending s. 1002.73(2), F.S.

⁴⁵ Section 4, ch. 2010-227, L.O.F., codified at s. 1002.66(4), F.S. An early learning coalition must reimburse an approved specialized instructional service provider for authorized services provided to an eligible child. The

The Agency for Workforce Innovation, in consultation with DOE, is required to adopt procedures for determining eligibility and enrolling children in the VPK Program option for children with disabilities and for paying specialized instructional service providers under this option.⁴⁶ A parent of a child receiving specialized instructional services may withdraw from the program for good cause and reenroll in another program if no more than 70 percent of the funds authorized have been expended.⁴⁷

How do school districts provide special instruction and services to gifted students?

While current law requires districts to provide special instruction and services to all ESE students, it does not specify the types of instruction and services required for gifted students or the methods used to provide gifted instruction. School districts may restructure basic content area courses as gifted program offerings in order to meet the needs of gifted students.⁴⁸ School districts also utilize several models to provide instruction to gifted students, such as cluster schools; co-teaching; self-contained gifted classes; and courses with gifted and other students in which the teacher differentiates instruction in a mixed ability course.⁴⁹

School district gifted education services generally fall into the categories of enrichment or acceleration. Enrichment activities provide students with more complex and in-depth study of subjects than is available via the regular education curriculum.⁵⁰ Acceleration allows a student to work at a faster pace or engage in higher level work and may include whole-grade or subject matter acceleration, as well as acceleration mechanisms including dual enrollment; early admission to a postsecondary institution; advanced placement; credit by examination; the International Baccalaureate Program; and the Advanced International Certificate of Education Program.⁵¹

Acceleration programs for elementary and middle school students are not specifically addressed in law; however, school districts may adopt policies addressing these issues pursuant to their statutory authority to adopt rules to admit, classify, promote, and graduate students.⁵²

In addition, all students, including gifted, may take advantage of the Credit Acceleration Program (CAP) created by the Legislature in 2010.⁵³ The CAP allows a middle school or high school student who is not enrolled in a course that requires a statewide, standardized end-of-

reimbursement may not exceed the Voluntary Prekindergarten Education (VPK) Program base student allocation. Section 4, ch. 2010-227, L.O.F., *codified at* s. 1002.66(5), F.S.

⁴⁶ Section 7, ch. 2010-227, L.O.F., *amending* s. 1002.75(3), F.S.

⁴⁷ Section 5, ch. 2010-227, L.O.F., *amending* s. 1002.71(4)(a), F.S.

⁴⁸ *OPPAGA Report No. 08-01, supra* note 1 at 7; s. 1003.57(1), F.S.

⁴⁹ *OPPAGA Report No. 08-01, supra* note 1 at 7.

⁵⁰ Florida Department of Education, Exceptional Student Education Program Development and Services, *Acceleration of Gifted Students Brief*, (2003), available at http://www.fldoe.org/ESE/pdf/gift_accel.pdf.

⁵¹ See ss. 1007.27 and 1007.271, F.S.; Florida Department of Education, Exceptional Student Education Program development and Services, *Acceleration of Gifted Students Brief*, (2003), available at http://www.fldoe.org/ESE/pdf/gift_accel.pdf.

⁵² See s. 1003.02(1)(a), F.S.

⁵³ Section 5, ch. 2010-22, L.O.F., *codified at* s. 1003.4295(3), F.S.

course (EOC) assessment to earn high school credit in the course if the student attains a score indicating satisfactory performance on the corresponding EOC assessment.⁵⁴

What is the McKay Scholarships for Students with Disabilities Program?

The McKay Scholarships for Students with Disabilities Program (McKay Scholarship Program) provides scholarships for eligible students with disabilities to attend an eligible public or private school of their choice. A student with a disability in kindergarten through grade 12 is eligible to participate in the McKay Scholarship Program if he or she has:

- ❖ Received specialized instructional services under the Voluntary Prekindergarten Education Program⁵⁵ during the previous school year and the student has a current IEP developed by the local school board in accordance with rules of the state board for the McKay Scholarship Program (available for kindergarten students beginning with the 2013-14 academic year);
- ❖ Spent the prior school year in attendance at a Florida public school or the Florida School for the Deaf and the Blind; or
- ❖ Been enrolled and reported by a school district for funding, during the October and February Florida Education Finance Program surveys, in any of the 5 years prior to FY 2010-11; has a current IEP developed by the district school board in accordance with state board rules for the McKay Scholarship Program no later than June 30, 2011; and receives a first-time McKay scholarship for the 2011-12 academic year.⁵⁶

How does the Florida Department of Education monitor Exceptional Student Education?

The IDEA requires states to assess and ensure the effectiveness of efforts to educate children with disabilities.⁵⁷ In accordance with IDEA, DOE's Bureau of Exceptional Education and Student Services is responsible for ensuring that the requirements of the federal law and the educational requirements of the state are implemented.⁵⁸ The bureau is required to examine and evaluate ESE procedures, records, and programs; provide information and assistance to school districts; and assist the districts in operating effectively and efficiently.⁵⁹ However, school districts are not required to report to the bureau how ESE funds are expended.⁶⁰

The primary methods used by the bureau in carrying out these obligations are monitoring of all school district ESE programs through a compliance self-assessment conducted annually by

⁵⁴ End-of-course (EOC) assessments are subject-specific assessments that are administered at the end of a particular course. EOC assessments must be rigorous, statewide, standardized, and developed or approved by DOE. Section 1008.22(3)(c)2.a., F.S., *as amended by* s. 8, ch. 2010-22, L.O.F.

⁵⁵ Section 4, ch. 2010-227, L.O.F., *codified at* s. 1002.66, F.S.

⁵⁶ Section 1, ch. 2010-227, L.O.F., *amending* s. 1002.39(2), F.S.; *see also* McKay Scholarships for Students with Disabilities Program Fact Sheet.

⁵⁷ 34 C.F.R. s. 300.1(d).

⁵⁸ 34 C.F.R. s. 300.149 (a)(1) and (2).

⁶³ *See* ss. 1001.42(4)(l) and 1003.57, F.S.; rule 6A-1.0943, F.A.C.

⁵⁹ Florida Department of Education, Bureau of Exceptional Student Education and Student Services, *Exceptional Student Education Compliance Self-Assessment: Processes and Procedures Manual 2009-2010*, at 1, available at <http://www.fldoe.org/ese/pdf/m-compli.pdf>.

⁶⁰ *OPPAGA Report No. 08-01*, *supra* note 1, at 3.

school districts, (with results validated by the bureau through a sampled desk review) and periodic on-site monitoring of targeted school districts that includes interviews, record reviews, student case studies, classroom observations, and student focus groups. Other methods of providing oversight and ensuring compliance include, coordinating mediation sessions, conducting state complaint investigations, and overseeing due process hearings conducted by the Division of Administrative Hearings on behalf of DOE. Lastly, monitoring occurs through informal communication with parents and school districts, including the provision of guidance or technical assistance and contacting district on behalf of parents to assist in resolving issues.⁶¹

In 2006, the Legislature⁶² directed DOE to develop and have an operating electronic statewide IEP system. The system was to be developed in collaboration with school districts and made available on July 1, 2007.⁶³ In response to this requirement, the Portal to Exceptional Education Resources (PEER) was created by DOE to provide a standardized process for the provision of ESE services for Florida's school districts, including the Developmental Research Laboratory schools, the Florida School for the Deaf and Blind, and the Florida Department of Corrections.⁶⁴

PEER is an on-line application that provides assistance in the development of education plans and is a resource for teachers to use in the development and tracking of ESE processes required by federal and state law. PEER also facilitates the electronic transmission of data and provision of services for transferring students and reduces paperwork with quality assurance processes.⁶⁵ Eventually, PEER will be used to manage additional ESE processes including intervention/prevention activities, referrals, eligibility determination meetings, and student reevaluations.⁶⁶

Are students with disabilities required to take statewide assessments?

Yes. All students attending public schools, including students with disabilities, are required to take statewide assessments.⁶⁷ A student with a disability participates in the statewide assessment program by taking the statewide assessment with accommodations or without accommodations or by taking an alternate assessment.⁶⁸ Which assessment method is appropriate is determined by the student's IEP team. The IEP team may determine that:

- ❖ The student is able to access instruction and the statewide assessment without accommodations;

⁶¹ Email, Florida Department of Education, 2010 Exceptional Student Education (Sept. 8, 2010).

⁶² Chapter 2006-74, L.O.F.

⁶³ *Id.*

⁶⁴ Florida Department of Education, Bureau of Exceptional Education and Student Services, Presentation-Administrators Management Meeting, Sept. 17-19, 2008, <http://www.fldoe.org/ese/ppt/amm/peer.ppt> (last visited Aug. 16, 2010).

⁶⁵ *Id.*

⁶⁶ *Id.*

⁶⁷ Section 1008.22(3)(c)8., F.S., *as amended by* s. 8, ch. 2010-22, L.O.F. Florida Department of Education, Division of Public Schools, Bureau of Exceptional Student Education and Student Services, *Statewide Assessment for Students with Disabilities Technical Assistance Paper No. 2010-92*, at 1 (July 15, 2010), [hereinafter *DOE Statewide Assessment for Students with Disabilities TAP No. 2010-92*] available at <http://info.fldoe.org/docushare/dsweb/Get/Document-5831/dps-2010-92.pdf>. Statewide assessments include the FCAT and all statewide, standardized end-of-course (EOC) assessments. See also Statewide Assessment Program Fact Sheet.

⁶⁸ Rule 6A-1.0943, F.A.C.

- ❖ The student requires allowable accommodations⁶⁹ during instruction and for participation in a statewide assessment; or
- ❖ The student has a significant cognitive disability and meets the following criteria for participating in the statewide alternate assessment:⁷⁰
 - ◆ The student is unable to master the *Sunshine State Standards*, even with appropriate and allowable instructional accommodations, assistive technology, or accessible instructional materials;
 - ◆ The student is participating in a curriculum based on the state standards access points⁷¹ for all academic areas; and
 - ◆ The student requires direct instruction in academics based on access points in order to acquire, generalize, and transfer skills across settings.⁷²

The DOE has developed the Florida Alternate Assessment (FAA) for students with significant cognitive disabilities.⁷³ The FAA consists of reading and mathematics assessments for eligible students in grades 3 through 10; science assessments for eligible students in grades 5, 8, and 11; and writing assessments for eligible students in grades 4, 8, and 10.⁷⁴

State board rule also provides for a student with a disability to receive a special exemption from participation in statewide assessments, including the alternate assessment, under extraordinary circumstances. Extraordinary circumstances are defined as “physical conditions that affect a student’s ability to communicate in modes deemed acceptable for statewide assessments, creating a situation where the results of administration of a statewide assessment would reflect a student’s impaired sensory, manual, or speaking skills rather than the student’s achievement.” A district school superintendent must submit any such request to the Commissioner of Education in writing at least 30 school days before the assessment administration and include:

- ❖ A description of the student’s disabling conditions, including a specific description of the student’s impaired sensory, manual, or speaking skills and the extraordinary circumstances for the exemption request;
- ❖ Documentation of the most recent evaluation data;
- ❖ A description of the disability’s effect on the student’s achievement;
- ❖ Evidence that the student has had the opportunity to learn the skills being tested; and

Evidence that the manifestations of the student’s disability prohibits the student from responding to the statewide assessment, even when appropriate accommodations are provided so that the result of the testing reflects the student’s impaired sensory, manual, or speaking skills, rather than the student’s achievement.⁷⁵

⁶⁹ Rule 6A-1.0943, F.A.C. State board rule must provide for accommodations for students with disabilities. Section 1008.22(3)(c)8., F.S., *as amended by s. 8, ch. 2010-22, L.O.F.*; *see also* Statewide Assessment Program Accommodations and Alternate Assessments Fact Sheet.

⁷⁰ Rule 6A-1.0943(2), F.A.C.

⁷¹ Access points are expectations written for students with significant cognitive disabilities to access the general education curriculum. Access points are embedded in the *Sunshine State Standards* and reflect the core intent of the standards with reduced levels of complexity. Florida Department of Education, *Access Points for Students with Significant Cognitive Disabilities*, <http://www.floridastandards.org/page24.aspx> (last visited Aug. 19, 2010).

⁷² Rule 6A-1.0943(4), F.A.C.

⁷³ *See* rule 6A-1.09430, F.A.C.

⁷⁴ Rule 6A-1.09430(3)(a), F.A.C.

⁷⁵ Rule 6A-1.0943(5), F.A.C.

What graduation credentials are available to students with disabilities?

The three graduation credentials available to students with disabilities are the standard high school diploma;⁷⁶ the certificate of completion;⁷⁷ and the special high school diploma.⁷⁸

Standard High School Diploma. To graduate, a student must earn the required number of credits and achieve the required grade point average.⁷⁹ In addition, to receive a standard high school diploma, students must pass the grade 10 FCAT or attain concordant scores on the SAT or ACT.⁸⁰ However, attaining a passing score on the FCAT as a requirement for graduation with a standard high school diploma may be waived for a student with a disability by the student's IEP team.⁸¹ In addition, under extraordinary circumstances, the commissioner may grant a special exemption from the FCAT graduation requirement for a student with a disability.⁸²

Certificate of Completion. Generally, a certificate of completion may be awarded to students who obtain the required number of credits for graduation without passing the grade 10 FCAT or satisfying the 2.0 grade point average requirement for graduation. A student with a disability who does not qualify for a waiver or exemption may exit school with a certificate of completion. Any student who is otherwise entitled to a certificate of completion, whether general education or disabled, may elect to remain in school as either a full-time or a part-time student for up to one additional year and receive special instruction designed to remedy his or her identified deficiencies.⁸³ Because they are entitled to a FAPE until age 22, a student with a disability who does not qualify for a waiver or exemption may choose to remain in school until achieving a standard diploma or reaching age 22, whichever occurs first.⁸⁴

Special Diploma. A student who has an intellectual disability; an autism spectrum disorder; a language impairment; an orthopedic or other health impairment; a traumatic brain injury; an emotional or behavioral disability; a specific learning disability, including dyslexia, dyscalculia, or developmental aphasia; or a student who is deaf, hard of hearing, or dual sensory impaired may be awarded a special diploma.⁸⁵ Each district school board must prescribe specific

⁷⁶ Sections 1003.428, and 1003.43, F.S.

⁷⁷ Sections 1003.428(7)(b) and 1003.43(10)(b), F.S.

⁷⁸ Section 1003.438, F.S.

⁷⁹ Sections 1003.428, 1003.429, and 1003.43, F.S. The three graduation options are the traditional 24-credit option, accelerated 18-credit College Preparatory Program option, and accelerated 18-credit Career Preparatory Program option. *Id.*; see also High School Graduation Fact Sheet.

⁸⁰ Sections 1003.428(4)(b), 1003.429(6)(a), 1003.43(5)(a) and 1008.22(3)(c)6. and (10), F.S.; rule 6A-1.09422(7), F.A.C.; Florida Department of Education, *FCAT Graduation Requirements* (May 2008), available at <http://fcats.fldoe.org/pdf/fcatpass.pdf>; see High School Graduation Fact Sheet.

⁸¹ Sections 1003.428(8)(b), 1003.43(11)(b), and 1008.22(3)(c)8., F.S.; see Florida Department of Education, *Waiver of the Florida Comprehensive Assessment Test (FCAT) Graduation Requirement for Students with Disabilities, Technical Assistance Paper No. 2010-24* (March 12, 2010), available at <http://www.fldoe.org/docushare/dsweb/Get/Document-5694/dps-2010-24.pdf>.

⁸² Rule 6A-1.09431(5), F.A.C.; *DOE Statewide Assessment for Students with Disabilities TAP No. 2010-92*, *supra* note 67, at 3-4.

⁸³ Sections 1003.428(7)(b) and 1003.43(10)(b), F.S.

⁸⁴ Rule 6A-1.09431(5), F.A.C.

⁸⁵ Section 1003.438, F.S.

graduation requirements that such students must meet to achieve a special diploma. District requirements must be based on the completion of basic, vocational, and ESE courses.⁸⁶

Is a student with a disability who does not earn passing scores on statewide assessments eligible for a standard high school diploma?

Yes. A student with a disability may earn a standard high school diploma without earning passing scores on the grade 10 FCAT, if:

- ❖ The student’s IEP team determines that the FCAT cannot accurately measure the student’s abilities taking into consideration all allowable accommodations;
- ❖ The student completes the state’s 24-credit and 2.0 cumulative grade point average (GPA) requirements and any other district requirements for graduation with a standard high school diploma; and
- ❖ The student has taken the grade 10 FCAT with appropriate, allowable accommodations in grades 10 and 11.⁸⁷

Since the 2001-02 academic year, a total of 74,052 students with disabilities have graduated from high school with a standard diploma. Over this period, 24.4 percent of these graduates (18,061) received a waiver of the requirement to earn a passing score on the grade 10 FCAT and three students received a special exemption from the commissioner due to extraordinary circumstances.⁸⁸

In 2010, the Legislature significantly revised the requirements of the statewide assessment program, replacing grades 9 and 10 FCAT Mathematics and grade 11 FCAT Science with end-of-course (EOC) assessments in Algebra I, Geometry, and Biology I.⁸⁹ Beginning with students entering grade 9 in 2011-12, a student must pass the EOC assessment in Algebra I in order to earn course credit, which is required for high school graduation. Beginning with students entering grade 9 in 2012-13, a student must pass the EOC assessments in Geometry and Biology I in order to earn credit in those courses, which are also required for graduation.⁹⁰ For purposes of course credit, a student may satisfy the requirement to pass a statewide, standardized EOC assessment by attaining equivalent scores on another assessment, as determined by the commissioner.⁹¹

A student with a disability may have the EOC assessment results waived for the purpose of determining the student’s course grade and credit, if the student’s IEP committee⁹² determines that an EOC assessment cannot accurately measure the student’s abilities, taking into consideration all allowable accommodations.⁹³

⁸⁶ Rule 6A-1.09961, F.A.C.

⁸⁷ Sections 1003.428(8)(b), F.S.

⁸⁸ Email, Florida Department of Education, 2010 Exceptional Student Education (Sept. 8, 2010).

⁸⁹ Section 1008.22(3)(c), F.S., *as amended by* s. 8, ch. 2010-22, L.O.F.

⁹⁰ Section 1008.22(3)(c)2.a.(I) and (II), F.S., *as amended by* s. 8, ch. 2010-22, L.O.F.

⁹¹ Section 1008.22(11)(a), F.S., *as amended by* s. 8, ch. 2010-22, L.O.F.

⁹² An IEP team is a group of individuals that is responsible for developing, reviewing, or revising an IEP for a student with a disability. Rule 6A-6.03411(1)(v), F.A.C.

⁹³ Section 1003.428(4)(b)2., F.S., *as amended by* s. 8, ch. 2010-22, L.O.F.

What types of testing accommodations are authorized for statewide assessments for students with disabilities?

Testing accommodations for students with disabilities on statewide assessments may include:

- ❖ Adjustments to the presentation of the statewide assessment questions;
- ❖ Adjustments to the methods of recording examinee responses to the questions;
- ❖ Adjustments to the scheduling for the administration of the assessment;
- ❖ Adjustments to the settings for the administration of the assessment; and/or
- ❖ The use of assistive technology or devices to facilitate the student's participation in the assessment.⁹⁴

Any accommodations that negate the validity of a statewide assessment are not allowable.⁹⁵ District personnel are required to implement the accommodations in a manner that ensures the test responses are the independent work of the student. Personnel are prohibited from assisting a student in determining how the student will respond or directing or leading the student to a particular response.⁹⁶

In addition to the standard testing accommodations listed above, a student with a disability who needs a unique accommodation may submit a request for use of the accommodation to DOE for approval by the commissioner.⁹⁷

How is Exceptional Student Education funded?

Services for exceptional education students are funded primarily via the Florida Education Finance Program (FEFP) through the use of basic funding, an ESE Guaranteed Allocation, and two weighted cost factors. FEFP funding reflects approximately 91 percent of the total funding for Florida's public school students. FEFP funds are calculated by multiplying the number of full-time equivalent (FTE) students in each of the funded education programs by cost factors to obtain weighted FTE students.⁹⁸ Weighted FTE students are then multiplied by a base student allocation and by a district cost differential. In FY 2010-11, \$980.5 million was appropriated to school districts through the ESE Guaranteed Allocation.⁹⁹

Since July 1, 2000, approximately 95 percent of ESE students have generated funds at the same level as nondisabled students. These students are reported under basic programs 111 (grades PK-3 basic, with ESE services), 112 (grades 4-8 basic with ESE services) or 113 (grades 9-12 basic with ESE services). In order to fund exceptional education and related services (including therapies) for these students, an ESE Guaranteed Allocation was established by the Legislature in addition to the basic funding. The guaranteed allocation is a fixed amount provided each district.¹⁰⁰

⁹⁴ Rule 6A-1.0943(3)(a), F.A.C.; *DOE Statewide Assessment for Students with Disabilities TAP No. 2010-92, supra* note 67 at 2-3; see also *Statewide Assessment Program Accommodations and Alternate Assessments Fact Sheet*.

⁹⁵ Section 1008.22(3)(c)8., F.S., *as amended by* s. 8, ch. 2010-22, L.O.F.; rule 6A-1.0943(3)(a), F.A.C.

⁹⁶ Rule 6A-1.0943(3)(d), F.A.C.

⁹⁷ Rule 6A-1.0943(4), F.A.C.

⁹⁸ Email, Florida Department of Education (Aug. 20, 2010).

⁹⁹ Specific Appropriation 78, s. 2, ch. 2010-152, L.O.F.

¹⁰⁰ Florida Department of Education, Bureau of School Business Services, Office of Funding and Financial Reporting, *Funding for Florida School Districts 2009-2010 Statistical Report, available at* <http://www.fldoe.org/fefp/pdf/fefpdist.pdf>.

For the remaining five percent of students with disabilities (those with the most intense needs), funding is determined using a matrix of services. Consistent with the services identified in the IEP, each matrix is completed by checking all the services that will be provided to the student. Students with the two highest matrix ratings (254 and 255) generate funding at a significantly higher weight than basic funding.¹⁰¹

Each year the IDEA awards (IDEA, Part B and IDEA, Part B Preschool) are made to states from the USDOE. A major portion of these funds are distributed to school districts/agencies as entitlement grants. Allocations to districts/agencies are calculated using a federally-mandated formula. Funds must be used to supplement the excess costs of providing special education and related services for students with disabilities. Remaining award funds are used by DOE to support capacity building and other state-level activities as required by the IDEA.¹⁰²

Where can I get additional information?

Florida Department of Education

Services for Students with Disabilities
Bureau of Exceptional Education and Student Services
(850) 245-0475
<http://www.fl DOE.org/ese/>

Florida Department of Education

Services for Gifted Students
Bureau of Curriculum and Instruction
(850) 245-0423
http://www.fl DOE.org/bii/Gifted_Ed/

U.S. Department of Education

Office of Special Education and Rehabilitative Services and
Office of Special Education Programs
400 Maryland Avenue, S.W.
Washington, D.C. 20202-7100
(202) 245-7468
<http://www.ed.gov/about/offices/list/osers/index.html>
<http://idea.ed.gov/>

Florida House of Representatives

Education Committee
(850) 488-7451
<http://www.myfloridahouse.gov/>

¹⁰¹ *Id.*

¹⁰² *Id.*

